



PATENT
Docket No. 400-009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Andrea F. Bell

Entitled: UTILITY APRON

Filed: July 28, 1997

Serial No.: 08/901,713

) Group Art Unit: 3728

) Examiner: J. Foster

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Assistant Commissioner for Patents
U.S. Patents and Trademark Office
Washington, D.C. 20231

RESPONSE TO OFFICE ACTION NO. 5

In response to the Office Action of July 5, 2001 (Paper No. 22), please consider the following in connection with the continued prosecution of this application.

Submitted herewith is a Petition for Extension of Time, together with the required petition fee. If that Petition or fee should be missing or inadequate, then this paper should be accepted as a Petition and the Commissioner is authorized to charge any missing or deficient fees to our deposit account 501324.

Applicant hereby incorporates by express reference and reaffirms the positions and responses set forth in the responses to Office Actions filed on September 8, 1998, May 17, 1999, February 25, 2000, and March 23, 2001 as if fully set forth herein.

**Rejection of Claims 1-31 Under
Section 103(a) (Lindsay and Baumgartner)**

Applicant respectfully stands by her position that independent claim 1 patentably distinguishes over Lindsay (U.S. Patent No. 4,993,551) because Lindsay fails to disclose or suggest a utility apron in a combination of elements which comprises a shell having lip portion for contacting the lip of the support device and an exterior surface for disposition at the exterior of the support device, and which further comprises a pocket disposed upon the exterior surface of the shell away from the longitudinal axis, the pocket including a resilient opening, the size of the opening being variable depending upon the extent to which the resilient opening is extended, as recited in claim 1.

As has been noted, Lindsay fails to disclose a utility apron wherein any of the pockets have a resilient opening, and wherein the size of the opening is variable depending upon the extent to which the resilient opening is extended, as recited in claim 1. The claimed apron solves problems implicit in the Lindsay design. The resiliency of the pockets of the claimed apron conveniently holds items such as cleaning products, canisters, bottles, and other items for storage and organization. The resiliency of the pockets of the claimed invention fulfills a long-felt need in the art by making it easier for the user's hand to fit inside of the pocket for placement of items into the pockets, by significantly reducing the susceptibility of the pockets to ripping, etc.

Applicant also reaffirms her position that the combination using Lindsay and

Baumgartner is improper because Baumgartner constitutes non-analogous art.

Over arm carrying bags are not within the field of the invention or the Applicant's field of endeavor, nor are they reasonably pertinent to such field. One of ordinary skill in the art, seeking to improve upon utility aprons, would not have turned to the field of over arm carrying bags to find solutions. Carrying bags are not designed or intended for use on a support device, such as bucket, having an interior, an exterior, an opening, and a lip at the opening. These fields are in different art units, and share few if any commonality of subject matter.

Moreover, neither Baumgartner nor Lindsay provides the legally necessary suggestion or motivation to extend or otherwise apply their teachings to one another as indicated in the Office Action. Baumgartner provides no teaching or suggestion to apply its over arm carrying bag disclosure to utility aprons. It fails even to mention such aprons. Nor does Lindsay provide any suggestion to look to or otherwise rely on carrying bag arts.

Claims 1-9 and 27-28 patentably distinguish over Lindsay and Berry et al., they are in condition for allowance, and their formal allowance is requested.

Claims 10-18 and 29-30 patentably distinguish over Lindsay and Baumgartner, taken alone or in combination, for the reasons set forth above with respect to claims 1-9 and 27-28.

Claims 19-26 and 31 also patentably distinguish over Lindsay and Baumgartner, taken alone or in combination, for the reasons set forth above with respect to claims 1-9 and 27-28.

Rejection of Claims 1-31
Under Section 103(a) (Adding Yoo)

The Office Action further rejects claims 1-31 as being unpatentable over Lindsay and Baumgartner, and further in view of Yoo (U.S. Patent No. 5,431,265). Applicant submits that these claims patentably distinguish over Lindsay and Baumgartner for the reasons set forth above, including the status of Baumgartner as non-analogous art, and that Yoo fails to remedy those deficiencies.

Yoo also is non-analogous art. It relates to an enclosed sports accessory bag. Such bags are not within the Applicant's field of endeavor, nor is such art reasonably pertinent to the utility apron field. One of ordinary skill in the art, seeking to address limitations of utility aprons, would not look to accessory bags for solutions.

Even if considered analogous, which Applicant submits it is not, Yoo fails to provide a suggestion or motivation to apply its teachings to utility aprons. Applicant can find no teaching or suggestion in Yoo that its teachings can or should be applied to any articles other than accessory bags. There is no indication or suggestion that the teachings of Yoo may be applied to utility aprons. Applicants respectfully take issue with the position as set forth in the Office Action at page 5 that the article holding pockets of Yoo themselves provide suggestion enough. It is Applicant's position that the nature of the article that contains the pocket is relevant. An argument that the mere existence of a pocket, regardless of the type of article, can be considered sufficient motivation or suggestion can only be carried if

one relies, impermissibly, on hindsight afforded by the invention.

With regard to the claims pertaining to the sizes of the openings, and the summary in the Office Action of *In re Rose*, 105 USPQ 237, 240 and *In re Yount*, 80 USPQ 141, Applicant reiterates the statements made in the Response to Office Action Nos. 2 and 3, e.g., that these cases are specific to their facts and do not provide blanket prohibitions of patentability where size is a distinguishing feature. The Court of Appeals for the Federal Circuit has made amply clear in numerous report decisions that claimed inventions are to be viewed as a whole. To the extent size is a feature that serves to distinguish a claimed invention viewing the claim as a whole, and as here, where that feature provides an advantage not disclosed or suggested in the prior art, patentability may not be precluded based on some overriding proposition that size alone cannot afford a ground for patentability.

Declarations of George Millican Jr., Gary Cohen, and Andrea F. Bell

In addition to the foregoing, Applicant has attached and hereby submits for consideration the Declarations of Gary Cohen and Andrea F. Bell. The previously submitted Declaration of George Millican, Jr. is also incorporated herein.

As set forth in the Cohen Declaration, Mr. Cohen has had regular involvement with the design, selection, repair, maintenance, and/or use of utility aprons. His Declaration provides further support for the position that persons of ordinary skill in the art at the time the invention was made would have considered the claimed invention as addressing a solution to a long-felt need in the art -- an

indicium of non-obviousness. Mr. Cohen states that in his experience in the art, conventional utility aprons were not adapted to place an elastic portion at the opening of the apron pockets. Mr. Cohen further states that the claimed invention's addition of the elastic portion at the opening of the apron pockets permits the pockets of the claimed apron to securely retain items typically used in household or interior building cleaning, such as fluid bottles, thus meeting a previously "unmet need." (See paragraph 11 of Cohen Declaration.)

The Bell Declaration also sets forth evidence of indicia of non-obviousness in the form of a long-felt need and commercial success. Applicant, Ms. Bell, states in paragraph 6 of her Declaration that commercial aprons similar to that of Lindsay were designed for holding tools with relatively stiff or rigid pockets without much flexure. This design made the commercial aprons non-conducive to use in the art of cleaning. Ms. Bell found that the design of conventional aprons made it difficult to insert, see, securely retain, and remove cleaning items, and often made the pocket of the conventional aprons susceptible to ripping. Ms. Bell also declares as to the commercial success enjoyed by her product, ABC POCKETS®, embodying the claimed invention. Approximately 4,000 units of ABC POCKETS® have been sold. Retailers such as Ace Hardware and Wal-Mart have been among the purchasers of ABC-POCKETS®.

In Office Action No. 5, the Examiner states at page 4 that "the declarer [of the George E. Millican, Jr. declaration] has failed to establish that such a solution has been made with respect to the known closest prior art device, such as an apron

like that of Lindsay.” Paragraph 6 of the Bell Declaration states that there were several commercial products on the market that were similar to that of Lindsay. These commercial products shared many of the attributes of Lindsay, including the lack of pockets with resilient openings. Applicant has also submitted herewith the Declaration of Mr. Cohen, who has opined that the claimed utility apron addressed a long felt need. As noted above, Mr. Cohen was employed in the sale of cleaning aprons and presumably would have been familiar with commercial products on the market.

The Examiner also states at pages 4-5 of Office Action No. 5 that the George E. Millican, Jr. Declaration did not provide “factual data, such as multiple or ongoing events of mishaps or problems with prior aprons, and dates of such events, [for] establish[ing] a long-felt need regarding improvement over such aprons.” In response, the Examiner’s attention is directed to paragraph 9 of the Bell Declaration, which provides statements of purchasers who corroborated the existence of this long-felt need in the art. As set forth in the Bell Declaration, commercial cleaners expressed deficiencies of conventional tool carriers and bucket organizers -- such as found in the Lindsay patent -- and stated how the resilient pocket openings of the claimed invention overcame these deficiencies of conventional tool carriers and bucket organizers.

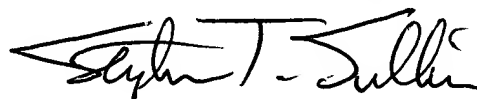
Conclusion

In conclusion, Applicant respectfully submits that claims 1-31 as pending patentably distinguish over the cited and applied references, and are in condition for allowance. Reconsideration of the application is requested in view of the remarks set forth above.

If any additional fees or amounts are due in connection with the filing of this paper or the prosecution of this application, please charge them to our Deposit Account No. 501324.

Dated: January 7, 2002

Respectfully submitted,



Stephen T. Sullivan
Reg. No. 32,444

CERTIFICATE OF EXPRESS MAILING

Express Mail Label No. EV054088601US

Date of Deposit January 7, 2002

I hereby certify that this Response to Office Action No. 5 and attached Declarations of Gary Cohen and Andrea F. Bell are being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed Assistant Commissioner for Patents, P.O. Box 2327, Arlington, VA 22202-0327.

